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Patent Docket P1101P1

#38
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3-12-03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Avi J. Ashkenazi Serial No.: 09/020,746 Filed: February 9, 1998 For: Apo-2 Receptor Antibody	Group Art Unit: 1647 Examiner: C. Kaufman
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SECOND SUPPLEMENTAL RESPONSE

Assistant Commissioner of Patents
Washington DC 20231

Sir:

Consideration of the remarks herein are respectfully requested.

REMARKS

Applicant thanks Examiners Kaufman, Eyler and Caputa for the interview conducted on February 13, 2003.

Applicant submits that the original and supplemental responses filed October 21, 2002 and January 22, 2003, respectively, address all outstanding issues regarding the present application. Applicant's position remains that there are no actual or potential grounds upon which the Office may properly refuse to issue the presently pending claims and that there is no basis for the Office to further delay issuance of the present application.

Applicant notes that in the first supplemental response filed January 22, 2003, references were made to certain provisional and non-provisional applications filed by third parties, the

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existence, contents and status of which are of public record. These applications include, *inter alia*, the following:

- Provisional Application No. 60/041,230, filed on March 14, 1997, now abandoned;
- Provisional Application No. 60/040,846, filed March 17, 1997, now abandoned;
and
- Application No. 08/843,652, filed April 16, 1997, now abandoned.

Applicant noted in the first supplemental response that the above-referenced applications are the subject of priority claims under 35 U.S.C. 119(e) and 120 of certain other applications, one or more of which may be pending before the Office. As indicated in the first supplemental response, none of the above-referenced applications describe or could adequately support the invention defined in the claims of the present application under 35 U.S.C. 101 and 112, first paragraph. As such, no patent issued by the Office upon an application that claims priority to these applications would be prior art to the present claims.

Attached please find an additional declaration under 37 CFR 1.131 by Dr. Avi J. Ashkenazi. The declaration effectively antedates the priority filing dates of the above-referenced third party applications and is further evidence that the present application should pass to immediate issuance.

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Applicant respectfully requests that the Office consider the above remarks and issue the present application. As noted above, if the Examiner is not prepared to pass this application to immediate issue, Applicant respectfully requests that the Examiner or her supervisor contact the undersigned prior to taking any further action in this application.

Respectfully submitted,
for GENENTECH, INC.



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Date: February 28, 2003